JS 44 (Rev. 12/12)

#### **CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

130	erisourceBergen Drug 00 Morris Drive esterbrook, PA 19087	Corporation		2	255 Valley	macy, Inc. d/b/ Boulevard ge, NJ 07075	'a DiGino's A	pothec	ary
(b) County of Residence of (EX	First Listed Plaintiff <u>Ch</u> CEPT IN U.S. PLAINTIFF CAS	nester (ES)		County of Residence  NOTE: IN LAND CO THE TRACT	(IN U.S. PI	LAINTIFF CASES OF		F	
(c) Attorneys (Firm Name, A Maurice R. Mitts, E 1822 Spruce Street, (215) 866-0110				Attorneys (If Known)					
II. BASIS OF JURISDI	CTION (Place an "X" in On	ie Box Only)		TIZENSHIP OF P	RINCIPA	L PARTIES	Place an "X" in C and One Box for	ne Box fo	or Plaintiff
□ 1 U.S. Government Plaintiff	3 Federal Question (U.S. Government N	ot a Party)		(For Diversity Cases Only) PT en of This State		Incorporated or Pri	ncipal Place	PTF	DEF  0 4
☐ 2 U.S. Government Defendant	☐ 4 Diversity (Indicate Citizenshi)	o of Parties in Item III)				Incorporated and P of Business In A		O 5	<b>⊠</b> 5
				en or Subject of a   reign Country	3 🗇 3	Foreign Nation		6	
IV. NATURE OF SUIT	(Place an "X" in One Box On				1 200	WINDS OF THE PARTY	OTHERS	TATILLE	29
CONTRACT    110 Insurance   120 Marine   130 Miller Act   140 Negotiable Instrument   150 Recovery of Overpayment & Enforcement of Judgment   151 Medicare Act   152 Recovery of Defaulted Student Loans (Excludes Veterans)   153 Recovery of Overpayment of Veteran's Benefits   160 Stockholders' Suits   190 Other Contract   195 Contract Product Liability   196 Franchise    REAL PROPERTY   210 Land Condemnation   220 Foreclosure   230 Rent Lease & Ejectment   240 Torts to Land   245 Tort Product Liability   290 All Other Real Property	PERSONAL INJURY  310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury Medical Malpraetice CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/ Accommodations 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 448 Education	PERSONAL INJUR  365 Personal Injury - Product Liability  367 Health Care/ Pharmaceutical Personal Injury Product Liability Product Liability PRESONAL PROPEI  370 Other Fraud  371 Truth in Lending  380 Other Personal Property Damage Product Liability  PERSONAL PROPEI  370 Other Fraud  371 Truth in Lending  380 Other Personal Property Damage Product Liability  PRISONER PETITIO Habeas Corpus:  463 Alien Detainee  510 Motions to Vacat Sentence  530 General  535 Death Penalty Other:  540 Mandamus & Ot 550 Civil Rights 555 Prison Condition 560 Civil Detainee - Conditions of Confinement	1	LABOR Other  LABOR Other  LABOR Of Fair Labor Standards Act Labor/Management Relations Of Railway Labor Act Family and Medical Leave Act Cherry Carbon Control Employee Retirement Income Security Act  IMMIGRATION Actions Other Immigration Actions	422 Appe   423 With 28 U   2	rights at emark  SECURITY (1395ff) k Lung (923) C/DIWW (405(g)) Title XVI	375 False Cl   400 State Re   410 Antifus   430 Banks a   450 Commei   460 Deporta   470 Rackete Corrupi   480 Consum   490 Cable/S   850 Securiting Exchan   890 Other Si   891 Agriculi   893 Environ   895 Freedom Act   896 Arbitrat   899 Administration   899 Administration   899 Administration   400 Exchan   896 Arbitrat   899 Administration   899 Administration   899 Administration   400 Exchange   400 E	aims Act apportion t nd Bankin rre tion er Influen Organizat ter Credit at TV es/Commo ge tatutory A tural Acts mental M n of Infort ion strative Pr Decision utionality	ment  ng  ced and tions  odities/ actions fatters mation  rocedure
	emoved from	Appellate Court	Reo	(specify	er District	6 Multidistr Litigation			
VI. CAUSE OF ACTION	ON 28 U.S.C. 1332(a	)		Do not cite jurisdictional sta narmaceutical Produ	cts Purcha	ased from Plair	ntiff		
VII. REQUESTED IN COMPLAINT:		IS A CLASS ACTIO		DEMAND \$ 284,763.14	(	CHECK YES only JURY DEMAND	if demanded in	complai	
VIII. RELATED CAS IF ANY	E(S) (See instructions):	JUDGE			DOCK	ET NUMBER			
DATE 04/04/2014		signature of A Maurice R. Mit			9			:	
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RECEIPT # A	MOUNT	APPLYING IFP		JODGE					

#### IN THE UNITED STATES DISTRICT COURT FOR THEEASTERN DISTRICT OF PENNSYLVANIA

## CASE MANAGEMENTTRACK DESIGNATION FORM

AmerisourceBergen Drug Corporation	CIVIL ACTION
v.	
DGN Pharmacy, Inc. d/b/a DiGino's Apothecary	NO.
In accordance with the Civil Justice Expense and Delay Reduction shall complete a Case Management Track Designation Form in complaint and serve a copy on all defendants. (See § 1:03of the properties of the properties) In the event that a defendant does not agree with the properties, a Case Management Track Designation Form specific believes the case should be assigned.	plan set forth on the reverse side of this laintiff regarding said designation, that court and serve on the plaintiff and all
SELECT ONE OF THE FOLLOWING CASE MANAGEME	NT TRACKS:
(a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 throu	igh § 2255. ( )
(b) Social Security – Cases requesting review of a decision of the and Human Services denying plaintiff Social Security Benefit	Secretary of Health s. ( )
(c) Arbitration – Cases required to be designated for arbitration u	nder Local Civil Rule 53.2. ( )
(d) Asbestos – Cases involving claims for personal injury or propexposure to asbestos.	perty damage from ( )
(e) Special Management – Cases that do not fall into tracks (a) the commonly referred to as complex and that need special or into the court. (See reverse side of this form for a detailed explana management cases.)	ense management by
(f) Standard Management – Cases that do not fall into any one of	f the other tracks. $(X)$
April 7, 2014 Date  Maurice R. Mitts Attorney-at-law	Attorney for Plaintiff
(215) 866-0110 (215) 866-0111 Telephone FAX Number	mmitts@mittslaw.com E-Mail Address

## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMERISOURCEBERGEN DRUG	4
CORPORATION	

1300 Morris Drive Chesterbrook, PA 19087

Civil Action No.:	

Plaintiff,

VS.

#### **DGN PHARMACY, INC.**

d/b/a DiGino's Apothecary 255 Valley Boulevard Wood Ridge, NJ 07075

Defen	dant.	

#### **COMPLAINT**

Plaintiff AmerisourceBergen Drug Corporation ("AmerisourceBergen") brings this
Complaint against Defendant DGN Pharmacy, Inc., d/b/a DiGino's Apothecary ("DiGino's
Apothecary") seeking compensation for Defendant's breach of contract and failure to pay for
pharmaceutical products purchased from Plaintiff. In support of this complaint, Plaintiff alleges:

#### **PARTIES**

- 1. Plaintiff AmerisourceBergen, a pharmaceutical services company providing drug distribution and related services, is incorporated in Delaware and maintains its principal place of business at 1300 Morris Drive, Chesterbrook, Pennsylvania 19087.
- 2. Defendant DiGino's Apothecary is incorporated under the laws of the State of New Jersey and maintains its principal place of business at 255 Valley Boulevard, Wood Ridge, New Jersey 07075.

#### JURISDICTION AND VENUE

- 3. This Court has diversity jurisdiction over this case pursuant to 28 U.S.C. § 1332(a) because the parties are citizens of different states and the amount in controversy exceeds the threshold \$75,000 requirement, exclusive of interest and costs.
- 4. Pursuant to Paragraph 7 of the Credit Agreement between the parties, the defendant consented to jurisdiction and venue before the United States District Court for the Eastern District of Pennsylvania. A true and correct copy of the Credit Application and Credit Agreement (with tax identification numbers redacted) ("Credit Agreement") is attached hereto and incorporated herein as Exhibit "A."
- 5. Venue is also proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because, inter alia, a substantial part of the events giving rise to this claim occurred in this judicial district and because the Defendant is subject to the personal jurisdiction of this Court.

#### **FACTUAL ALLEGATIONS**

#### The Contract

- 6. DiGino's Apothecary executed and submitted a Credit Application and Credit Agreement to AmerisourceBergen, providing the terms of their agreement. See Exhibit A at ¶7.
- 7. AmerisourceBergen sold pharmaceutical goods and services to DiGino's Apothecary pursuant to the Credit Agreement and the additional terms specified in the Invoice Terms and Conditions (printed on the reverse side of each invoice page). A true and correct copy of the Invoice Terms and Conditions ("Terms & Conditions") is attached hereto and incorporated herein as Exhibit "B." Together, the Terms and Conditions and the Credit Agreement shall be referred to herein as the "Agreement."

8. Pursuant to the terms of the Credit Agreement, AmerisourceBergen is a secured creditor. To secure all of Defendant's liabilities to AmerisourceBergen, Defendant granted Plaintiff a "purchase money security interest in Inventory and Proceeds" and "a lien upon and security interest in all its personal property" including all of Defendant's "(a) Accounts; (b) Inventory; (c) Chattel Paper; (d) Commercial Tort Claims . . . (e) Deposit Accounts; (f) Documents; (g) Equipment; (h) General Intangibles; (i) Goods; (j) Instruments; (k) Investment Property; (l) Letter of Credit Rights; ..." See Exhibit A at ¶ 2.

#### The Transactions

- 9. During the period on or about June 1, 2012 through December 13, 2013, DiGino's Apothecary purchased pharmaceutical goods and services from AmerisourceBergen pursuant to the Agreement and has failed to pay for those products. A true and correct copy of the January 3, 2014 Statement ("Statement") is attached hereto and incorporated herein as Exhibit "C."
- 10. The Agreement provides that AmerisourceBergen may assess a per day late fee of 0.05% on the outstanding balance due until paid. *See* Terms and Conditions, attached as Exhibit "B" at ¶ 20.
- 11. The total amount due from DiGino's Apothecary to AmerisourceBergen as of January 3, 2014 for unpaid pharmaceutical goods and services, including the late fees, is \$284,763.14. See Exhibit "C."
- 12. Additional late fees continue to be assessed pursuant to the Agreement. See Terms and Conditions, attached as Exhibit "B" at  $\P$  20.

13. Despite attempts to collect the amounts due, DiGino's Apothecary has not paid Plaintiff.

## DiGino's Apothecary Breached the Contract by Failing to Pay AmerisourceBergen

- 14. Under Paragraph 6 of the Credit Agreement and under Paragraph 10 of the Terms and Conditions, DiGino's Apothecary agreed that if its payments were late, it would pay AmerisourceBergen's collection costs, expenses and attorney's fees. *See* Exhibit "A" at ¶ 6 and Exhibit "B" at ¶10.
- 15. Pursuant to the Credit Agreement, if DiGino's Apothecary "fails to pay when due any amount owing," AmerisourceBergen may "accelerate and declare all Obligations immediately due and payable without demand or notice" and exercise all rights and remedies available at law or equity. Exhibit "A" at ¶¶ 4-5.

#### COUNT I - BREACH OF CONTRACT

- 16. AmerisourceBergen repeats and re-alleges all of the preceding paragraphs as if fully set forth at length again herein.
- 17. AmerisourceBergen provided pharmaceutical goods and services to DiGino's Apothecary pursuant to the Agreement as specified in the Terms and Conditions and Credit Agreement.
- 18. DiGino's Apothecary breached the Agreement by failing to pay

  AmerisourceBergen for the pharmaceutical goods and services Defendant received.

- 19. DiGino's Apothecary breached the Agreement by failing to pay all amounts due to AmerisourceBergen, including amounts for the pharmaceutical goods and services received, plus late fees and collection costs.
- 20. Through the aforementioned actions, DiGino's Apothecary has breached the Agreement and proximately caused monetary damage to AmerisourceBergen.
- 21. DiGino's Apothecary is liable to AmerisourceBergen for, *inter alia*, payment in full for all goods and services received (as listed in the Statement dated January 3, 2014), plus ongoing late fees assessed at 0.05% per day. *See* Credit Agreement, attached as Exhibit "A"; Terms and Conditions, attached as Exhibit "B" and Statement, attached as Exhibit "C."
- 22. DiGino's Apothecary is also liable for AmerisourceBergen's attorneys' fees and costs incurred in connection with this action. *See* Credit Agreement, attached as Exhibit "A"; Terms and Conditions, attached as Exhibit "B."
- 23. Defendant's breaches of its obligations under its Agreement with AmerisourceBegen entitle AmerisourceBergen to a judgment in its favor and against Defendant DGN Pharmacy, Inc., d/b/a DiGino's Apothecary in the amount of \$284,763.14, together with interest, continuing late fees in the amount of 0.05% per day from January 3, 2014 until paid, attorney's fees and all other costs of collection.

WHEREFORE, Plaintiff AmerisourceBergen Drug Corporation demands judgment against Defendant DGN Pharmacy, Inc., d/b/a DiGino's Apothecary in the amount of \$284,763.14, together with interest, continuing late fees in the amount of 0.05% per day from January 3, 2014 until paid, attorney's fees, all other costs of collection and such further and additional relief as this Court deems just and proper.

Respectfully submitted,

MITTS LAW, LLC

Dated: April 7, 2014

Maurice R. Mitts, Esquire

Rebecca Field Emerson, Esquire Attorney I.D. No.: 50297/207778

1822 Spruce Street

Philadelphia, PA 19103

(215) 866-0112/0118 (telephone)

(215) 866-0113/0119 (facsimile)

Attorney for Plaintiff
AmerisourceBergen Drug Corporation

## **EXHIBIT A**

DiGino's Apothecary
Wood Ridge, NJ 07075

Credit Ap 1000025619

plication & Credit Agreement	Applicant: DG	N Enarmacy PIEIR	Diguno o
06.05.2012	31	0	(Company Name)
		Account #	
	AmerisourceBergen		(for office use only)
Bellco	Credit Application and Credit Agreem		
AmerisourceBergen takes great pride as the premi			ou for taking time to
complete this Credit Application and Agreement. V	Velcome to the AmericourceBergen fa		
Applicant		Servicing Division:	THLEHEM
Company: DGN Pharmac	A. T.	Year business started:	2009
D/B/A (if any): DIGINO'S APOT	WECARY	MACHENIA THE STATE OF THE STATE	
Address: 255 Vallan 5	TI III	Current owners since:	2009 12011
- Valled	3110.	State of Formation/Incorpor	ration: NT
City/State/Zip: Wood Midou, 1	15. 97075		
Shipping Address (if different):	W		
Billing Address (if different):			
	0-1-2211-00-0 5	mail ACOM P acom	
Little # Mol 822-0234-1. Lat.			DCX - DE P
Business Form: Sole Proprietorship	Corporation General Partnersh	p Limited Partnership	LLC
Tex ID # 26 - 4694846 Organization	ID # (issued by the State of Formation):	400281331 NAI	3P#
In-pro-	0 /0"		
Type of Business: Drug Store Rx Ph		losed Door (contract name) 🗀	THE BOOK
Hospital Chain		ther (specify).	noti lensier
Estimated Monthly Purchases \$ 450,0	20 Rx <u>95</u> % otc <u>5</u>	% DME/HHC O %	3rd Party %
<ul> <li>Attach copies of Articles/Certificate of Incorporation, Ce formation, and any d/o/a(s), as applicable</li> </ul>	rtificate of Formation, Partnership Agreeme	ent, Certificate of Partnership or oth	er evidence of entity
	Calley Tay Daniels land made at middle Service	al atala as a t	
Attach copies of DEA license, Pharmacy Board Permit,		at statement.	
Ownership (list each person owning 10% or more;		A 1	
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Bank Address	PA O PI	ione# Fax#	Account#
Premises are: Leased Owned	If leased: Minen Prop	enties y	+3-722-1085
North Abra or a	DAGO 65th St	ord Name	Telephone #
Insurance Agent: NGT TAC TAC.	Complete and the	Telephone # 12004	Policy #
Agent Name & Address	17600END WA 1190	Wh 1361716	99713101-
By:signing below, Applicant (a) certifies that all information	Control of the Contro	to be bound by the attachee Creat	Agreement 03/000
Account Manager: Who Dutch	6-1-2019 Applicant's Sign	ature:	L > 6/1/2012
0	(Date)		(Date)
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A		Title: Pres.	
For Office Use:	Terms Approved:	Credit Line:	1.1
Submitted by:	Approved by:		
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Applicant: DEN Pharmacy Inc. DIEA Augeno or Company Name)

#### CREDIT AGREEMENT

This Credit Agreement, together with the credit application submitted by Applicant, any Prime Vender Agreement(s) or other servicing agreement(s), and stated invoice tettes, notestible, an agreement snorry Applicant and AmericanceBergen Drug Corporation and Belico Drug Corp. (individually, "Vendor" and collectively, "Vendor"). Applicant understands and agrees to the following terms and conditions of sale with respect to the purchase of guods and services from each Vendor.

- 1. Phymont Terms. If Applicant enters into a Prime Vendor Agreement or my any other individual servicing agreement, the specific payment terms are as stated in such appreciate. Officervise, specific provincial terms are stated on the invoice delivered to Applicant. The following terms apply to all purchases of goods and services unless the Prime Vendor Agreement or other individual service agreement provides otherwise, in which event the terms of the Prime Vendor Agreement or other individual service agreement will control: (a) All payments must be deposited to Vendor's account during normal buildness hours by the date due. (b) Prices quoted include a discount in anticipation of payment within terms. Should payments be deposited to Vendor's account later than the due date, or if the payment is dishonored, Vendor will invoice Applicant for the unearned discount by recalculating the price of goods. A processing fee of \$30 will be invoiced for each dishonored payment. O If payment is delinquent, Vendor may, in addition to Vendor's right to exercise other remedies, withhold any credits or payments to Applicant and assess a per-thiry late payment fee of the lower of 0.05% (18%/360) or the maximum rate permitted by law on the outstanding balances until paid, beginning on the first (1st) business day after such due date. Additionally, Vendor may adjust future Price of Goods to reflect Applicant's payment history. (d) Applicant agrees to promptly pay when invoiced all denied chargebacks for disallowed/ineligible contract pricing, and to look solely to the relevant numufacturer(s) and/or buying group(s) for redress. (c) Billing disputes must be filed with Vendor's Accounts Receivable Department by the earlier of thirty (30) days after receipt of the first statement containing the amount in dispute or the seriod set by a manufacturer for chargebacks. Otherwise, Applicant will be deemed to accept the accuracy of such statements and to waive its right to dispute the amount, (f) Drivers and Vendor employees causes accept physical, (g) Drivers are not authorized to verify contents or quantities of puckages. Applicant agrees that a receipt signed by a driver for any tote or package does not constitute evidence of the contents or value of the package. (b) Applicant acknowledges and understands that Vendor his the absolute right to change pricing or payment terms or suspend delivery of products to Applicant without my liability being incurred by Vendor.
- 2. Security Agreement. To secure all of Applicant's existing and future liabilities to Vendors and their affiliates, including the repayment of any amounts that Vendors (or either of them) may advance or spend for the maintenance or preservation of the Collateral (as defined below) or otherwise (collectively, the "Obligations"), Applicant grants to each Vendor a purchase money security interest in Inventory and Proceeds (to the extent allowed by applicable law) and a lien upon and security interest in all its personal property and any and all additions, substitutions, Accessions and Proceeds therein or thereof, wherever located, and now owned or hereafter sequired or arising, including the following (collectively, the "Colimeral"): All of Applicant's (a) Accounts; (b) Inventory; (c) Chattel Paper; (d) Contemptal Test Claims at disclosed on Applicant's Financial Statements: (e) Deposit Accounts; (f) Documents; (g) Equipment; (h) General Intempibles; (l) Ocods; (j) Instruments; (k) Investment Property; (l) Letter of Credit Rights; (m) insurance on all of the foregoing and the proceeds of that insurance; (n) Applicant's money and other property of every kind and estime now or at any time or times tereafter in the possession of or under the control of each Vendor, and (o) the Cash proceeds, Noncash proceeds and products of all of the foregoing and the Proceeds of other Proceeds. All capitalized terms used berein and not defined have the ming set forth in the Uniform Commutated Code as in effect in any jurisdiction in which any of the Collateral may at the time be located (the "UCC"). Applicant authorizes each Vendor to file a UCC financing statement describing the Collateral as "all assets." Applicant will cooperate with each Vendr or any successor secured party in obtaining control with respect to the Collateral, including Deposit Accounts, Investment Property, Letter-of-Credit rights, electronic chattel paper and the like. Applicant hereby grants to each Vendor an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to such Vendor at law and in equity, including such

rights and remedies available to such Vendor parsuant to this Credit Agreement. Vendors may at any time earboxie-Applicant's rights against Account debtors and Obligors. Applicant has the risk of less of the Collateral. Applicant will not make any sales, leases or other disposition of any of the Collateral except in the ordinary course of business. Applicant will not grant any other security interest in any of the Collateral.

- Covenants. (a) Applicant certifies that any information provided in the Credit Application or in connection with the Credit Application is true and complete. (b) Applicant will provide Vendors with such financial information as may be requested by any Vendor, and Applicant certifies that any such information will be true and complete. O Applicant will immediately notify Vendors of any change in its state of formation; the location of ownership of, or any intent to sell, close or maintally modify its business operations; my name change or change of business form (e.g. sole proprietorship, partnership or corporation); and any legal action that in the event of an unfavorable outcome would jeopardize the cogoing visbility of Applicant. (d) Applicant will distrily utify Vendors of the existence and nature of any Commercial Tort Claims that arise in favor of Applicant after the date of this Credit Agreeme and will execute and deliver additional security agreements to Vendors with respect to say such Commercial Tort Claim. (e) Applicant will allow Vendors or any other thrid-party engaged by a Vendor access to Applicant's premises to inspect the Collegeral and Applicant's books and records. (f) Applicant authorizes Vendors and any credit agency or any service engaged by a Vendor to obtain, verify or otherwise investigate any information, reference, statements; credit reports or other information obsained with respect to Applicant as either Vendor decars appropriate. (g) Applicant will maintain insurance sufficient to cover all indebtedness to each Vendor and name the applicable Vendor as the loss payor and additional insered. (b) Applicant will comply with all federal and state laws, including the Prescription Drug Marketing Act, and regulations and ordinances, including those adopted by Boards of Pharmacy, Drug Enforcement Administration, Food and Drug Administration, Medicare and Medicald agreedes, and all Vendors' policies, as amended from time to time, related to such laws including the Returned Goods Policy and any Declaration of Eligibility for Contract Pricing. (i) Applicant is responsible for any applicable sales tax and other charges imposed by federal, state, local or foreign governments on manufacture, sales, shipment, import, export or use of products or services (other than Vendor's income taxes). Applicant will provide applicable exemption certificates to Vendors. (j) The obligations. representations and covenants of Applicant to Vendors under this Credit Agreement will survive until all Obligations are indefeasibly paid in full.
- 4. Events of Default. The occurrence of any of the following will be an Event of Default under this Credit Agreement; (a) Applicant fails to pay when due any point owing to any Vendor or its affiliates; (b) Applicant fails to comply with any of the provisions or covenants of this Credit Agreement or any other agreement now existing or hereafter entered into between Applicant and any Vendor or its affiliates; O Applicant makes any representation or warranty in this Credit Agreement, the credit application to which it is attached, any other agreement now existing or hereafter entered into between Applicant and any Vendor or its affiliates, or in any financial statement delivered to any Vendor or its affiliates that is untrue or incomplete in any aspect that any Vendor or its affiliates decris to be material; (d) Applicant transfers or disposes of any of the Collectual other than in the ordinary course of business; (c) Applicant, voluntarily or involuntarily, becomes subject to any proceeding under the Bankruptcy Code or any itisolvency or receivership proceeding under federal or stide law; (f): Applicant fulls to comply with, or becomes subject to any administrative or judicial proceeding under any federal, state or local hazardous te or environmental law, asset forfeiture or similar law which can result in the forfeiture or property, or other law where non-compliance may have a significant, adverse effect on the Collegeral or the ability of Applicant to perform its Obligations; (g) Applicant discontinues in the business presently operated by it for a period of more than ten (10) consecutive days; (h) The death or incapacity of Applicant (if a sole proprietor), or any guaranter of the Obligations or the dissolution or liquidation of Applicant (if a corporation, partnership, joint venture, limited liability company or other entity); (i) The sale or transfer of the business or Applicant, he whole or in part, or a "Change in Control" in

Applicant, or (j) any Vendor's desirmination that there has been the occurrence of a material adverse change in the business, assets, financial condition or prospects of Applicant or any other person or entity obligated for the Obligations or the occurrence of an event which could reasonably be expected to result in such a material adverse change. "Change in Control means (if applicable) the sale, transfer or assignment of all or any material portion of the isasets of Applicant or of 25% or more of the voting equity in Applicant or a change in the power to vote 25% or more of the voting increst in Applicant.

- 5. Remedies Unon Default. Upon the occurrence of an Event of Default, any Vendor's may (a) accelerate and declare all Obligations immediately this and payable without demand or notice; (b) exercise all rights and remedies of a secured party under the ICC; (c) obtain the appointment of a receiver for Applicant's business or properties, to be vested with the fullest powers permitted under applicable law, vishout regard to the adequacy of the Collateral for the Obligations or the solvency of Applicant and Applicant will be deemed to have consented to such appointment without the necessity of such Vendor to post a bond; and (d) exercise all other rights and remedies available to such Vendor at law or in equity. The rights and remedies provided in the Credit Agreement, in any other agreement between Vendor and Applicant or afforded by law or equity are cumulative and may be exercised parrently, independently or mocessively. Vendor will not be decined to have elected or waived any other remedies by the exercise of one or more remedies. Any finbearance or delay in the exercise of any right or remedy hereunder of as otherwise afforded by law will not be a waiver of or preclude the exercise of any such right or remedy:
- 6. Costs and Espesies. Upon the occurrence of an Even of Default or if a Vendor becomes a party to any suit or proceeding (Including bankruptoy or insolvency proceedings) affecting Applicant, the Collateral or Vendor's interest therein, or if a Vendor engages occursed to collect any of the Obligations or to enforce or perserve any of the rights and remedies of Vendors under this Credit Agreement or any other agreement between Vendor and Applicant, Vendor's costs, expenses and reasonable counsel fies (including allocated fees and expenses of Vendor's in-house counsel), whether or not suif is instituted, will be paid by Applicant to Vendor on demand and, until paid will be additional. Obligations under this Credit Agreement:
- 7. Content To Jurisdiction. In any lawsuit initiated by Applicant against any Vendor, whether arising under this Credit Agreement or under any other agreement or undertaking between the parties. Vendors and Applicant hereby irrevocably consumt to the exclusive jurisdiction of the United States District Court for the Eastern District of Permsylvania and of all Permsylvania State Courts sitting in Chester Courty, Pennsylvania and any other court in the United States competent to bear appeals from such courts. In any-lawsuit initiated by any Vendor against

Applicant, Vendors and Applicant invevorably consent to the jurisdiction of the United States District Court for the Eastern District of Pennsylvania and of all Pennsylvania State Courts stiting in Chester County, Pennsylvania and any other court in the United States competent to blear appeals from such courts, and; Applicant waives any objection to improper venue and inconventiont forum for proceedings in any such court. Nothing in this Credit Agreement or in, any other agreement between the parties, will preclude Vendor from commencing or participating in actions or proceedings against Applicant in any other jurisdiction. Applicant intervocably agrees to service of process by certified mail, return receipt requested, to the address of Applicant set forth in the attached credit application or any related agreement.

Time to Asset Claims, Limitation on Damages. Any claim against a Vendor will be berned unless commerced within one (1) year from the date the cause of

Applicant: DEN Pharmacy Inc. DIDIA Degeno D

action has accrued. IN ANY ACTION COMMENCED BY OR AGAINST A VENDOR, ARISING OUT OF OR RELATED TO THE SALES OF GOODS BY SUCH VENDOR TO APPLICANT, NO PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOSS OF PROFITS OR REVENUE, LOSS OF BUSINESS OPPORTUNITIES, OR INDIRECT. SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSDEVER.

- 9. Occurrence I aw. This Credit Agreement and the rights and obligations of the parties will be construed, Interpreted, and enforced in accordance with and governed by the internal laws and regulations, as amended, of the Commonwealth of Pennsylvania, without reference to conflict of laws principles.
- 16. Waiver of July Total. The Parties Hereby Waive any and all rights they may have to a jury trial in connection with littigation commenced by or against a vendor with respect to their rights and obligations (a) under this credit agreement derant or any other agreement between the parties and (b) in any manner connected with, related to or incidental to transactions between the parties, whether sounding in contract, fort or otherwise.
- II. Successors and Assigns. This Credit Agreement will inure to the benefit of and be binding upon the heirs, successors and assigns of each of the parties; provided, however, Applicant may not assign this Credit Agreement without the prior written consent of Vendors. Assignment of all or any part of this Credit Agreement by either party will not relieve it of responsibility of performing its obligations to the actent that they are not satisfied in full.
- 12. Complete Agreement. This Credit Agreement (along with the credit application and any Prime Vendor Agreement or other individual servicing agreement entered into by Application and one or more Vendors and invoice terms) represents the full and complete understanding of the parties with respect to the subject matter bereof and cannot be modified except by writing and signed by the party or parties to be bound. Nothing herein is intended to amend the terms of any outstanding loss transaction between Applicant and any of the Vendors or to in any way diminish, relinquish or terminate any of Vendors' rights to previously-provided collateral intended to secure any obligations of Applicant to any Vendor or its predecessors including, without limitation, any gueranty, letter of credit or other forms of collateral. If any term, covernat or condition of this Credit Agreement is held to be invalid, illegal or unenforceable under any present or future law, such term, covenant or condition will be deemed severable and the rensamder of this Credit agreement will be unaffected. Captions are for convenience of reference only. Words, regardles of the tramber and gender used, will include any other number, singular or plural, any any geoder, masculine, feminine, or nuctor, as context requires. "And" includes "or." "Or" is disjunctive but not necessarily exclusive "Between" means "among" if more than two entities are involved. "Including" mema: "including but not limited to."
- 13. This Credit Agreement is not binding on Vendor unless accepted by Vendor in Chester County, Permytvania where this Credit Agreement is deemed made or, if eatility, upos the first shipment of products made by Vendor pursuant to find or is related agreement.

I/We have read an	d types to the terms specif	above, certify that all information provided is	true and controllete and intending to
e legally bound bere	by, enter into this Crellit	processed on behalf of Applicant.	
APPLICANTE	DOW A	hagmacy Inc-	
Ву:	(Name of Company)	// (SEAL)	Date: 6/3/2013-
Name; Tide: By:	Pres.	(SEAL)	Distr.
Name:	(Signature)	Pleas	se sign your name on the By: line and print your name and title
Title:	V. 185	A CONTRACTOR OF THE PARTY OF TH	and the second s

## **EXHIBIT B**

# Invoice Terms and Conditions

- 1. PRICE Pricing for goods or services on mis Invoice ("Goods") are subject to change by Seller without notice. Increases in labor, fielght, goods and material seast before delivery plus applicable GPO issue and uncerteen. Pricing based on Seller's support and increases, pricing may be higher outside the confinemental U.S. or enable Seller's normal service area. Pricing based on Seller's requisition cost may be adjusted which increases. Seller propriet the confinemental U.S. or enable Seller's normal services area. Pricing based on Seller's required by Boyer will be invoiced expansible, Boyer will be invoiced pricing include pricing relative seller for upgated charged-back sciented by a GPO or supplier or oro paid within a Selar's inpost, expert in proper a sease ("Tax Liabilities").
- ORDER AND DELIVERY. Except to observate provided, orders must be electronically transmitted and delivery is by common carrier. FOB delivants to Seller's instructions. Septer assumes all risk of loss after an electronically transmitted or lost Goods to entire at delivery and performance dates are approximate and not guaranteed.
- 3. PORCE MAIEURE. Selec is not liable for delays or other failures due to causes beyond its control, including sets of Bayor, bloor disputes, fire; invoving no or other resulty, acts of Good delays or shourges of transportation, products, muturing, above, or other, or other,
- 4. WARRANTY AND REMEDY, Unless ofnowine sepressly send on this invoice, Seller is not the manufacture of Goods. SELLER DISCLALUS ALL WARRANTES, EXPRESS OR ORPLESD, ENCLUDING THIOSE OF AREKCHANTABULTY, NON-DISPINATION AND PREMED IN PROPERTY OF GOODS ON SERVICES, Seller's only obligation and Dayer's only namedy for breach of any warrany will be for Seller, at its option, so reperform services, repair or replace acts deflects distribution and Dayer's only namedy for breach of any warrany will be for Seller's repair or replace acts of Seller's distribution and Representations, and representations, and when the representations, and when the representations and representations, and when the representations are represented by the representations and representations. IMPLIED IN ANY MANUAL, LITERATURE, ADVERTISING OR OTHER MATERIALS,
- 5. LIMITATIONS, Saller's fability for china, including prejugnee, will not exceed the price of specific Goods that give rise to a chaim. Saler dischains all liability palated on Goods dischains and the price of presentation of CONSEQUAL, INCIDENTAL OR CONSEQUENTAL DAMAGES, OR FOR DAMAGES IN THE NATURE OF PENALTIES IN CONSECUAL, INCIDENTAL OR CONSEQUENTAL OR CONSEQUENTAL OR CONSEQUENTAL OR CONSEQUENTAL OR CONSEQUENTAL DAMAGES, OR FOR DAMAGES IN THE NATURE OF PENALTIES IN CONSECUENT OR WITH OR RELATED TO GOODS, HARDWARE, SOFTWARE, INCLUDENT OR CONSEQUENT OR notice of any loss or darage of Goods and must commence any related action within one year atland the Invoice date;
- INDENNIFICATION AND WAIVER. Buyer will debad, indemnify, and hold harmless Seller, its officers, discrete, superscrutives and altitudes ("Seller Parties") from any loss or claim against Seller Parties with repres or discrete the control of the second and the seller superscrutives of Dayer Parties, to follow specifications, womings or reconductations (b) haive of Dayer Parties to compty with applicable is all requirements, including incoming (c) fallower to other applicance of any Buyer Parties (d) The Labilities or (g) alloged infringement of any patent, bandemark or copyright as a result of performance pursons to Dayer Parties (d) The Labilities or (g) alloged infringement of any patent, bandemark or copyright as a result of performance pursons to Dayer Parties (d) The Labilities or (g) alloged infringement of any patent, bandemark or copyright as a result of performance pursons to Dayer Parties (any Buyer Parties from all rights of
- motice to Seller and paying researable cancellation sharps; including (a) the price of Goods delivered or completed before Seler's receipt of such notices (b) all coars previously invarred in consection with sale and delivery of Goods. (c) a reasonable profit and (d) Seller's expenses incurred due to such concellation. BUPER'S CANCELLATION Buyer rany only curred Goods by written
- ADVICE AND ASSISTANCE. Upon request, Seller may in its discretional farmines in Barger rechanical solvines and measuremental solvines and measurements.
- rements made by or for Seller in connection with Groots are Seller's property and Bayes may not exproduce or transfer them. Buyes may not use or disclose Seller's made scores or confidential information, disclose any pricing or other teams to Seller's competitors or use them in experiments in order to reach an apprenium with remaining porty, SELLER'S PROPRIETARY RIGHTS. All davoings, software programs, inventous or improvinction or not designated as such, except as required in connection with ruse of Goods. Beyon may not
- by the dued dutt. Seller will invoice Dayer anch treatment discount by recalculating pricing (14.54-let's acquisition cost + 2%, or Invoice price + 2%, if guested) as of the due dutt. Seller may withhold any payment to Dayer and sees a pec-day bee payment for the lower of 0.05%.

  (1892/20) or the manniour, an expensionable of behavior and the payment in the payment in the payment is the payment of the lower of 0.05%.

  (1892/20) or the manniour and payment is the payment in the payment is the payment in the payment in the payment in the payment is the payment in the payment is the payment in the payment in the payment in the payment is the payment in the payment in the payment in the payment is the payment in the payment in the payment in the payment is the payment in the payment in the payment in the payment is the payment in the payment in the payment in the payment is the payment in the payment in the payment in the payment in the payment is the payment in the payment in the payment in the payment is the payment in the payment payment in the payment payment in the payment payment payment in the payment payment in the payment payment in the payment paym date this and is not subject to anilother, set att or millioned in. Pricing reflects a protopy payment discount. If payment is not received SECURITY AGREEMENT; CREDIT AND COLLECTION. To secue payment to Goods or otherwise, Seller hardy retains a secuity increase in Goods delivered and this horize will be a secuity agreement under the Uniform Commencial Code. Buyer analysizes ablet as is alternot necessary file on Buyer's behalf all documents Sellar demis necessary to partiest such assembly interest in Coost delivered a by the due data. Sellar will invoice Dayer and unemed discount by recalcibilities which its S. by the due data. Sellar will invoice Dayer and unemed discount by recalcibilities which its S. by the due data. Sellar will invoice Dayer and unemed discount by recalcibilities which its S. by the amendations are a second discount by recalcibilities which its S. by the amendations are a second discount.
- CENERIC SURSTITUTIONS Soller may substitute generically equivalent Goods from a different manulannam without prive miles a prive manulannam without prive IS SOLELY RESPONSIBLE FOR VERLIYING ACCURACY AND SUITABILITY OF GENERIC SUBSTITUTES.
- from 12. RETURNS. Select must authorize all entures in writings. Select will not accept returns unfess Buyer guestness that any Gods in returns never installed in examplaince with the Prescription Drug Narkstring. And return freight charges from any returns authorization, Saller may refuse it and all finance returns from Buyer. Select may deduct restacting, handling and return freight charges from any return of marked, soled, with its return of marked, soled, or otherwise unsuleable does to PDNA or other laws.
- CLAIMS. Buyer must report chims to Seller pranopily and comply with Seller's policies, giving Invoice date, number and other necessary information. Assatis by Buyer must comply with Seller's audic policies.
- LLOWANCES AND DISCOUNTS. This browice may use reflect all practings allowances and discouns to for Gooks. Byyer must compty with all laws and accountlely report and inconsures and discounts to festeral, states and private payous and retain this invoice and related the must compty with all laws and accountlely report and inconsures and discounts to festeral, states and private payous and retain this invoice and related the account of the construction of the const availabic to federai, state and private payor tepresents 14. ffcsr
- rapetra, they see the carior apparatual tensiven Boyer and Soller (for Goods. No modification will bind Soller uless in a formal written agreement, agrood by Soller's Goods are apported with the deserted descriptions of band mars. No variety by Soller of Boyer's deselbal will wise any beneficial. Capitods between son settlements was supported to with the deserted descriptions of band mars. No variety by Soller of Boyer's deselbal will will care any other transfers when the settlement of the settlement deserted and the settlement of the settlement described and the settlement deserted and the settlement of the settlement of the settlement deserted and settlement of the settlement deserted and settlement of the settlement deserted and settlement of the settlement of the settlement deserted and s MISCELLANBOUS. Terms of this invoice and Sellar's other standard terms supplement but do not choage, any formal written agreement to britted. Seller supressly rejects different or additional terms in Buyer's order and Buyer ands secaptures thate exact terms. Accepting of Granco, Internal Pennsylvania law governs this Invoice. Arbitration is not acceptable to Sellar. All provisions of this Invoice are soverable. I significance, Internal Pennsylvania law governs this Invoice. authorized officer. Seller expressly 18
- RQUALOPPORTUMITY. Saler will set discriminate against any exeployee or applicant because of noce, creed, color, unional origin, niligion, garder, sward preference, veseran stants, handisen or any offer ground prohibited by Itav and will rouse affirmative obligations imposed by have 16.

All prescription drugs purchased by Seller or its affiliate for describation in the U.S. are purchased directly from manufactures (or their sectionive distributors).

## **EXHIBIT C**

# AmerisourceBergen<sup>\*</sup>

STATEMENT Number: 52594441 Date: 01-03-2014 1 of 2

	MERISOURCEBERGEN D	RUG CURP	
. <u>5</u> 51	100 JAINDL BLVD.		
Division BI	ETHLEHEM	PA	18017-9434
87	77-313-8930		

(0)	Account:	100090475	/ 023136069		
nst	WOOD R	DGE		NJ	07075-1201
ıstom	255 VALL	EY BOULEVAR	D		
Ē	DGN PHA	RMACY INC			
	DIGINO'S	APOTHECARY			

0	AMERISOURCEBÉ	RGEN DRU	G CORP	
mitT	PO Box 29808			
Rem	NEW YORK		NY	10087-9808

	Not Yet Due:	2,765.10
тапу	Current:	921,70
턀	Past Due:	281,076.34
Sumi	Total Due:	281,998.04
S	Account Balance:	284,763.14

Account	Activity				
Activity Date	Due Date	Reference Number	Purchase Order Number	Activity Type	Amount
08-22-2013	08-16-2013	DATING 10/		Customer Invoice	22,379.15
08-22-2013	08-23-2013	DATING 11/		Customer Invoice	22,379.15
08-22-2013	08-23-2013	DATING 12/		Customer Invoice	22,379.15
08-22-2013	08-30-2013	DATING 13/		Customer Invoice	22,379.15
08-22-2013	08-30-2013	DATING 14/		Customer Invoice	22,379.15
08-22-2013	08-30-2013	DATING 15/		Customer Invoice	22,379,15
08-22-2013	09-06-2013	DATING 16/		Customer Involce	22,379.10
08-22-2013	08-09-2013	DATING 4/1		Customer Invoice	22,379.15
08-22-2013	08-16-2013	DATING 7/1		Customer Involce	22,379.15
08-22-2013	08-16-2013	DATING 8/1		Customer Invoice	22,379.15
08-22-2013	08-16-2013	DATING 9/1		Customer Invoice	22,379.15
09-24-2013	08-09-2013	AR INQ TP		Customer Document	21,250.15
09-30-2013	11-01-2013	800949069		PEP Rebate	(403.94)
10-15-2013	11-15-2013	800958826		Customer Credit Memo	(4.42)
10-18-2013	11-15-2013	800962591		Late Charge fee	7,609.19
10-25-2013	11-22-2013	800962998		Late Charge fee	923.11
11-01-2013	11-29-2013	800972604		Late Charge fee	923.11
11-08-2013	12-06-2013	800980556		Late Charge fee	921.72
11-15-2013	12-13-2013	800988588		Late Charge fee	921.72
11-22-2013	12-20-2013	800994585		Late Charge fee	921.70
11-29-2013	12-27-2013	800997549		Late Charge fee	921.70
12-06-2013	01-03-2014	801002743		Late Charge fee	921.70
12-13-2013	01-10-2014	801003129		Late Charge fee	921.70
12-20-2013	01-17-2014	801010698		Late Charge fee	921.70
12-27-2013	01-24-2014	801011053		Late Charge fee	921.70
01-03-2014	01-31-2014	801020634		Late Charge fee	921.70

Reminders	
Due Date	Amount
08-09-2013	43,629.30
08-16-2013	89,516.60
08-23-2013	44,758.30
08-30-2013	67,137.45
09-06-2013	22,379.10
11-01-2013	(403.94)
11-15-2013	7,604.77
11-22-2013	923.11
11-29-2013	923.11
12-06-2013	921.72
12-13-2013	921.72
12-20-2013	921.70
12-27-2013	921.70
01-03-2014	921.70
01-10-2014	921.70
01-17-2014	921.70
01-24-2014	921.70

## 

AmerisourceBergen

STATEMENT

Number: 52594441 Date: 01-03-2014 2 of 2

 Reminders

 Due Date
 Amount

 01-31-2014
 921.70

 Total Due: 281,998.04

 Terms:

Monday - Friday due in 28 days